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Office Supreme Court U. S.
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JAMES H. McKENNEY,
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No. 201.

Br. of Riddle for D. C. Com mo

Filed Oct. 8, 1900.

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. ~~528~~. 201

THOMAS F. FARRELL ET ALS.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Motion of Defendant in Error to vacate the Supersedeas Order granted on the suing out of the Writ of Error in this cause.

SUGGESTIONS AND BRIEF IN SUPPORT OF SAID MOTION.

F. A. RIDDLE,
ATTORNEY FOR DEFENDANT IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 325.

THOMAS F. FARRELL et al., *Plaintiffs in Error,* *vs.* **WEST CHICAGO PARK COMMISSIONERS,** *Defendant in Error.*	Error to the Supreme Court of Illinois.

This day comes the above named West Chicago Park Commissioners, defendant in error, by Francis A. Riddle, its attorney, and moves the Court to vacate the supersedeas order granted upon the issuing out of the writ of error in said cause.

FRANCIS A. RIDDLE,

Attorney for Defendant in Error.

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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 525.

THOMAS F. FARRELL et al.,
Plaintiffs in Error,
vs.
WEST CHICAGO PARK COMMISSIONERS,
Defendant in Error.

Error to the Supreme Court of Illinois.

Motion of Defendant in Error to vacate the Supersedeas Order granted on the suing out of the Writ of Error in this cause.

Suggestions and Brief in support of said Motion.

This is a motion made on behalf of the defendant in error, West Chicago Park Commissioners, to vacate the supersedeas order granted at the time of the issuing out of the writ of error in said cause.

In support of said motion it is insisted that the supersedeas order never had any legal existence and that it was issued without authority, and was when issued and has ever since been without any force or effect.

The final judgment from which the writ of error was sued out from the Supreme Court of Illinois was rendered on the 13th day of October, 1899, *Farrell* v. *West Chicago Park Commissioners*, 182 Ill., 250.

The judgment so entered on that day still remains unreversed and in full force and effect.

The judgment so entered in the Supreme Court was the final judgment of that court in the cause from which the writ of error was sued out.

Sholty v. *McIntyre, Admr.*, 136 Ill., 133.
Lester v. *People*, 150 Ill., 150.
Klein v. *Charles L. Boyd, Receiver*, 169 Ill., 325.

THE WRIT OF ERROR UNDER THE STATUTES OF THE UNITED STATES, AND UNDER THE DECISION OF THE SUPREME COURT OF THE UNITED STATES, SHOULD HAVE BEEN SUED OUT AND A COPY LODGED IN THE CLERK'S OFFICE, WHERE THE RECORD OF THE FINAL JUDGMENT WAS KEPT, WITHIN SIXTY DAYS, EXCLUSIVE OF SUNDAYS, FROM AND AFTER THE DATE OF THE ENTRY OF THE FINAL JUDGMENT.

> "The service of a writ of error, or the perfection of an appeal within sixty days, Sundays exclusive, after the rendition of the judgment or the passing of the decree complained of, is an indispensable prerequisite to a supersedeas, and * * * it is not within the power of a justice or judge of the Appellate Court to grant a stay of process on the judgment or decree, if this has not been done."
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> *Kitchen* v. *Randolph*, 3 Otto, 86.

This doctrine is affirmed in *Peugh* v. *Davis*, 110 U. S., 227.

To the same effect is the case of *Sage et al.* v. *The Central Railroad Company of Iowa et al.*, 3 Otto, 412, where this court say:

> "A *supersedeas* is a statutory remedy. It is only obtained with a strict compliance with all the required conditions, none of which can be dispensed with. *Hogan* v. *Ross*, 11 Howard, 297. *R. R. Co.* v. *Harris*, 7 Wall., 575. Time is an essential element in the proceeding, and one which neither the court nor the judges can disregard. If a delay beyond the limited time occurs the right to the remedy is gone, and the successful party holds his judgment or decree free and discharged from this means of staying proceedings for its collection or enforcement. This is a right which he has acquired and of which he cannot be deprived without due process of law. The court can no more give effect to a supersedeas by ordering that the appeal shall relate back to a time

> within the sixty days than it can to an appeal begun after the expiration of two years by dating it back to a time within the limitation. To make a *nunc pro tunc* order effectual for such purposes it must appear that the delay was the act of the court, and not of the parties, and that injustice will not be done."
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> *Sage* v. *Central R. R. Co.*, 3 Otto, 412.

The precise question has been recently passed upon by the Circuit Court of Appeals for the First Circuit.

In *New England Railroad Co.* v. *Hyde*, Mr. Justice Brown, speaking to that court, says:

> "After the expiration of sixty days, application was made to the Circuit Judge for approval of the bond, and for an order superseding the judgment, whereupon the following order was entered: 'Denied, because at the present time neither the Circuit Court nor any judge thereof has power to allow a supersedeas.' We think it clear that this ruling was correct.
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> *Kitchen* v. *Randolph*, 93 U. S., 86.
>
> *Sage* v. *Railroad Co.*, 93 U. S., 417.
>
> *New England Railroad Co.* v. *Hyde*, 101 Fed. Rep., 397.

To the same effect is *Logan* v. *Goodwin et al.*, decided in the Circuit Court of Appeals for the Eighth Circuit, and reported as *Logan* v. *Goodwin et al.*, 101 Fed. Rep., 654. In that case there were two motions, one to dismiss the writ of error, and the other to vacate the supersedeas. And the court there say:

> "The motion to vacate the supersedeas is doubtless well taken. In *Kitchen* v. *Randolph*, 93 U. S., 86, it was held by the Supreme Court (construing Sec. 1007 of the Revised Statutes) that unless an appeal is perfected, or a writ of error sued out and served within sixty days, Sundays inclusive, after the ren-

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dition of the decree or judgment complained of, it is not within the power of a justice of the Supreme Court to allow a supersedeas."

The motion to vacate the supersedeas was allowed.

Logan v. *Goodwin*, 161 Fed. Rep., 654.

It is manifest that the right of the plaintiffs in error to sue out the writ of error in the above entitled cause and have the same made to operate as a supersedeas, expired on the 22d day of December, 1899, and that between the 13th day of October and the 23d day of December, 1899, sixty full days had elapsed, excluding Sundays. It appears from the record now before this court that the writ of error was not sued out until the 23d or 24th of January, 1900, and was therefore not entitled to operate as a supersedeas.

The defendant in error, West Chicago Park Commissioners, together with the members of the Board of Public Park Commissioners for the Town of West Chicago, having fully answered the rule heretofore entered in this court upon them to show cause why they should not be punished for contempt, should not be longer required to remain in doubt as to the force and effect of a supersedeas order, improvidently granted upon the issuing out of the writ of error in the above entitled cause.

It is therefore respectfully submitted that an order should be entered vacating such order of supersedeas.

FRANCIS A. RIDDLE,

Counsel for West Chicago Park Commissioners,

Defendant in Error.